

Lance J. Hendron
Nevada State Bar No. 11151
Guymon & Hendron
625 S. Eighth Street
Las Vegas, Nevada 89101
Phone: (702) 758-5858
Email: lance@ghlawnv.com
Local Counsel for Jan Fuechtener

Zachary Lee Newland
Texas State Bar No. 24088967
Brandon Sample PLC
P.O. Box 250
Rutland, Vermont 05702
Phone: (802) 444-4357
Email: zach@brandonsample.com
Counsel *Pro Hac Vice*
For Jan Fuechtener and F.A.J.R. Magic Trust

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No. 2:16-cr-00100-GMN-CWH

JAN ROUVEN FUECHTENER,

Defendant.

RESPONSE IN OPPOSITION TO FORFEITURE

Defendant, Jan Rouven Fuechtener (“Fuechtener”), by and through his undersigned counsel, respectfully submits this response in opposition to the Government’s proposed order of forfeiture. Fuechtener’s criminal conviction is currently on direct appeal before the U.S. Court of Appeals for the Ninth Circuit.

1 Fuechtener has put forward a number of claims which directly put at issue his
2 guilty plea. *See United States v. Fuechtener*, No. 19-10097 (9th Cir. 2019).

3 Further, even if the U.S. Court of Appeals were to affirm the judgment of the
4 U.S. District Court it is anticipated that Fuechtener would file a timely motion to
5 vacate sentence under 28 U.S.C. § 2255. Under 28 U.S.C. § 2255(f)(1), a § 2255
6 motion must be filed within one year of “the date on which the judgment of
7 conviction becomes final.” 28 U.S.C. § 2255(f)(1). Fuechtener’s conviction is not yet
8 “final” for § 2255 purposes. *See Clay v. United States*, 537 U.S. 522 (2003). Thus, it
9 would be premature to permanently forfeit devices and property in this case.

10 The United States already has the exclusive custody of these materials and
11 will continue to have that custody of those items irrespective of any ruling. There is
12 no danger of these items dissipating or otherwise losing intrinsic value should the
13 Court elect to stay imposition of the forfeiture order. The digital items sought to be
14 forfeited contain evidence that goes to the heart of Fuechtener’s professed innocence
15 claim: was there someone else in the home who was actually accessing the illicit
16 material instead of Fuechtener?

17 This is a factual dispute that cannot be resolved should the United States
18 obtain forfeiture and dispose of these items. Fuechtener *is not* trying to re-litigate
19 the propriety of the forfeiture order itself at this time. Instead, Fuechtener is asking
20 the Court to exercise its considerable equitable power and decline to issue an
21 irrevocable forfeiture ruling until Fuechtener’s appeal and § 2255 proceedings are
22
23

1 finished. Otherwise, Fuechtener will be unable to secure the preservation of
2 evidence that may be necessary at any retrial or in a § 2255 proceeding.

3 Wherefore, the Court should decline to enter the final order of forfeiture in
4 this case in order to preserve any evidence which exists on the digital devices for
5 further judicial proceedings.

6
7 Respectfully submitted,

8 /s/ Lance J. Hendron

9 Lance J. Hendron
10 Nevada State Bar No. 11151
11 Guymon & Hendron
12 625 S. Eighth Street
13 Las Vegas, Nevada 89101
14 Phone: (702) 758-5858
15 Email: lance@ghlawnv.com

16 Local Counsel for Jan Fuechtener

17 /s/ Zachary L. Newland

18 Zachary L. Newland
19 Senior Litigation Counsel
20 **Brandon Sample PLC**
21 P.O. Box 250
22 Rutland, Vermont 05702
23 Phone: (802) 444-4357
Email: zach@brandonsample.com
Texas Bar: 24088967
<https://brandonsample.com>

Counsel *Pro Hac Vice* for Jan Fuechtener

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 9th day of March 2020, via CM/ECF on all counsel of record.

/s/ Zachary L. Newland
Zachary L. Newland

CERTIFICATE OF CONFERENCE

Prior to the filing of this motion I hereby certify that I attempted to confer via email and telephone with opposing counsel to ascertain their position on the merits of the relief sought herein. Counsel for the United States did not respond prior to the filing of this document with the court.

/s/ Zachary L. Newland
Zachary L. Newland